STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 28, 2010
v	No. 289984 Wayne Circuit Court
EVERETT EUGENE FOSTER, Defendant-Appellant.	LC No. 08-009664-FH

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking and entering a building with intent to commit larceny, MCL 750.110, and larceny in a building, MCL 750.360. He was sentenced as a fourth-offense habitual offender, MCL 769.12, to concurrent prison terms of three to ten years for the breaking and entering conviction and one to four years for the larceny conviction. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the evidence was insufficient to support his convictions as an aider or abettor. We disagree. "The test for determining the sufficiency of evidence in a criminal case is whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt." *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). To convict a defendant of aiding and abetting, the prosecution must prove that the defendant intended the commission of the crime or knew that the principal intended its commission at the time of giving aid or assistance. *People v Jones (On Rehearing)*, 201 Mich App 449, 451; 506 NW2d 542 (1993). As explained in *People v Robinson*, 475 Mich 1, 15; 715 NW2d 44 (2006):

> A defendant is criminally liable for the offenses the defendant specifically intends to aid or abet, or has knowledge of, as well as those crimes that are the natural and probable consequences of the offense he intends to aid or abet. Therefore, the prosecutor must prove beyond a reasonable doubt that the defendant aided or abetted the commission of an offense and that the defendant intended to aid the charged offense, knew the principal intended to commit the charged offense, or, alternatively, that the charged offense was a natural and probable consequence of the commission of the intended offense.

Here, viewed in the light most favorable to the prosecution, the circumstantial evidence was sufficient to establish beyond a reasonable doubt that defendant knew that the person referred to as "Willie" intended to break and enter the Gold Exchange and commit a larceny inside at the time defendant aided Willie's commission of the crimes. The jury was not required to accept defendant's exculpatory explanation to the police for why he drove "Willie" to the area. "The credibility of witnesses and the weight accorded to evidence are questions for the jury . . . ." *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009). An actor's intent may be inferred from all of the facts and circumstances in the case. *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

It is reasonable to infer – from defendant's conduct in driving "Willie" to the area of the Gold Exchange at approximately 2:30 a.m., waiting for him while Willie went inside, and allowing him to place a television in the vehicle before driving off with Willie – that defendant knowingly aided Willie in committing the crimes. Defendant's later flight from the police adds to this inference. Although flight alone is not sufficient to sustain a conviction, evidence of flight is relevant circumstantial evidence because it may indicate consciousness of guilt. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Considering all the facts and circumstances, the evidence was sufficient to support defendant's convictions.

Defendant also argues that his minimum sentences are cruel and unusual punishment under the Eighth Amendment and cruel or unusual punishment under Const 1963, art 1, § 16. Because defendant has fully served his one-year minimum sentence for the larceny conviction, this issue is moot with respect to that sentence. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994). Defendant's three-year minimum sentence for his breaking and entering sentence is within the appropriate guidelines range and, therefore, is presumptively proportionate. *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008). A proportionate sentence is neither cruel nor unusual. *Id.* Although defendant asserts that his conviction is based on evidence of questionable reliability, we have already determined that the evidence was sufficient to support the conviction. A challenge to the sufficiency of the evidence does not render a sentence cruel or unusual punishment. *Id.* Defendant has failed to overcome the presumption of proportionality

Affirmed.

/s/ Pat M. Donofrio
/s/ Patrick M. Meter
/s/ Christopher M. Murray